

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 569 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
HEIRS OF HARILAL R BHATT

Versus

RAVAL MADHAVRAY P  
-----

Appearance:

MR HARIN RAVAL for Petitioners  
MR PK JANI for Respondent No. 1  
-----

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants - tenants, who were sued by the respondent - plaintiff - landlord for a decree of eviction under the provisions of the Bombay

Rent Act.

2. The landlord sued the tenants for a decree of eviction on two grounds, namely that the tenant was in arrears of rent of more than six months and had omitted or neglected to pay the same within 30 days of the suit notice, and that the landlords reasonably and bonafide required the suit premises for their personal use and occupation within the meaning of section 13[1][g] of the said Act.

3. On a total consideration of the evidentiary material before it, the trial Court rejected the case of the landlord in respect of his claim of reasonable and bonafide requirements u/s 13[1][g]. However, the trial Court found in favour of the landlord by holding that the tenant was in arrears of rent for more than six months, and that the tenant was not ready and willing to pay the arrears of rent, and therefore, passed a decree of eviction against the tenant.

4. The tenant therefore preferred an appeal u/s 29[1] of the Bombay Rent Act. The lower appellate Court, after re-appreciating the entire evidence on record, confirmed the findings of fact recorded by the trial Court and also confirmed the decree for eviction against the tenant. Hence, the present revision u/s 29[2] of the Bombay Rent Act.

5. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. Only a few salient features require to be noted

in the instant case.

6.1 There is no serious dispute that the landlord had issued a statutory notice which was received by the tenant, and that the tenant in response thereto had sent the money order to the landlord within 30 days of the suit notice. This however does not take away the cause of action for filing of the suit. The well settled law is that the tenant is required to demonstrate his readiness and willingness to pay on the basis of the claim made in the suit, that he is required to pay or to deposit in Court the amount due to the landlord on the first day of hearing of the suit (namely the date of framing of the issues) or by such date as the trial Court may determine.

7. On the facts of the case, it is not disputed that not a single paise had been deposited in the trial Court even upto the date of decision of the suit. It is also an admitted position that the tenant had not applied to the Court for interim directions as to time to deposit any amount which the trial Court may direct.

8. As is clear from para 17 and 18 of the lower appellate Court's judgement, the tenant has not deposited a single paise in the trial Court till the decision of the suit. It is obvious from the tenant's own application exh.17 made in the appeal, that the first deposit came to be made on 17th February 1986, which was long after the decision of the trial Court.

9. The lower appellate Court was therefore amply justified in concluding that the tenant had failed to establish that he was ready and willing to pay the rent by either making payment or tender in Court the amount due, and by depositing or tendering any amount such permitted increase till the suit is finally decided. In other words, the tenant by not making any payment at all during the suit has contravened both section 12[3][b], as also clause (1) of section 12[3][b] of the Bombay Rent Act.

10. The lower appellate Court was therefore amply justified in concluding that the tenant had lost the protection of the statute, and that a decree for eviction must follow. The judgement and decree of the lower appellate Court is therefore eminently justified and is required to be confirmed. It is accordingly confirmed. This revision is therefore without any substance and the same is accordingly rejected. Rule is discharged. Interim relief stands vacated.

11. At this stage, learned counsel for the tenants seeks time to vacate the premises. In this context, by consent of learned counsel for the landlord, time to vacate is granted upto 9th of October 2000, and the present ad interim relief is extended till then, subject to the condition that both the petitioners shall file an undertaking in this Court on usual terms latest by 28th of July 2000. It is clarified that there shall not be any extension of time for the purpose of filing the undertaking, and if the same is not filed on due date, the ad interim relief extended hereby shall stand vacated ipso facto without any further orders in this regard.

\*\*\*\*\*

parmar\*